

UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 08Civ4438 (SAS)

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U.S. DISTRICT COURT
S.D.N.Y.

-----x
SUZANNE MCCORMICK,

Plaintiff,

-against-

THE STATE OF NEW YORK, ET AL.

Defendants.
-----x

HONORABLE JUDGE SHIRA A. SCHEINDLIN, U. S. D. J.

**AFFIRMATION FOR RECONSIDERATION
OF THE COURT'S AUGUST 8, 2008 OPINION AND ORDER**

PLAINTIFF Suzanne McCormick, *Pro Se*, moves pursuant to Local civil Rule 6.3, for reconsideration of the Court's August 8, 2008 Opinion and Order (the "Order") whereby the Court dismissed all cases related to *Anderson v. State of New York* (07 Civ. 9599, S.D.N.Y.) based on overlooked, misunderstood, or misperceived underlying grounds for the Complaint.

BASIS FOR RECONSIDERATION

1. Pursuant to Fed. R. Civ. P. 6(a) and rules 6.3 and 6.4 of the Local Civil Rules of the Southern District of New York, this request for reconsideration is timely, as it is submitted within ten business days of the date of the docketing of the Opinion and Order.
2. Reconsideration is warranted where the Court overlooked controlling decisions, factual matters or misstated in error factual information that might have influenced its prior determination on a matter at issue (See *Eisemann v. Green*, 204 F.3d 393, 395 n.2 (2d Cir. 2004); *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).

3. Plaintiff has been denied her right to file an Amended complaint. There were not yet any answers to Plaintiff's Complaint. (See Exhibit A - 11 pp.) There was not yet a Motion to Dismiss. In fact, no Defendants have been served yet with the Complaint.

4. Plaintiff, individually and collectively with the group, the group deemed as "Related," I believe accumulated irrefutable evidence of collusion between Judges, law enforcement, State agencies, and certain "influential" attorneys at law who seek to improperly profit at Plaintiffs' expense.

5. It is my understanding that the attorneys against whom damages are sought had numerous ethical complaints filed, all of which asserted similar violations of the mandatory disciplinary regulations.

6. *Anderson*, and the dismissed cases accepted by this Court as "Related," had the potential of unmasking State employees who (along with other attorneys at law) personally benefitted from violation their oaths of office. And these individuals acted improperly under the color of law-they are, at a minimum, personally responsible.

7. Without a fair and objective trial in U.S. District Court of the substantive Constitutional and civil rights issues, including demonstration of offenses with the documentary evidence, systemic State corruption becomes the Law of the Land, superior to all Constitutionally guaranteed rights and contrary to all U.S. Codes.

8. This Court's August 8, 2008 dated order violates my equal rights and other guaranteed rights that are explicitly protected by U.S. Constitution and U.S. laws cited in the various complaints and herein. Such violations make these complaints federal questions correctly before U.S. District Court.

PREMATURE ACTION TO DISMISS

9. I had not yet served any Defendants, nor have answers been filed, nor have any motions to dismiss been filed. Dismissal at this stage of litigation is inappropriate and is patently premature without discovery and my opportunity to **amend my *Pro Se* complaint**.

10. The United States Constitution does permit this Court to review the decisions of the EMPLOYEES of New York State (and other attorneys at law). The Supreme Court found in *Jett v. Dallas Independent School District* (491 U.S. 701 (1989)), that 42 U.S.C. § 1981 by its terms prohibits private discrimination as well as discrimination under color of state law. The Court considered whether § 1981 created a private right of action to enforce that prohibition against state actors. The Court concluded that, "the express cause of action for damages created by §1983 constitutes the exclusive federal remedy for violation of the rights guaranteed in § 1981 by state governmental units." (Id. At 720-721, 733).

11. "A plaintiff may sue a state official acting in his official capacity - notwithstanding the Eleventh Amendment - for prospective, injunctive relief from violations of federal law." (Opinion and Order, p36).

12. The U.S. Supreme Court in *Scheuer v. Rhodes* [416 U.S. 232 (1974)] held "The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely and hence erroneously in dismissing the complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims."

13. Further in *Scheuer v. Rhodes*, the Court noted "If the immunity is qualified, [416 U.S. 232, 243] not absolute, the scope of that immunity will necessarily be related to facts as yet not established either by affidavits, admissions, or a trial record. Final resolution of this question

must take into account the functions and responsibilities of these particular defendants in their capacities as officers of the state government, as well as the purposes of 42 U.S.C. 1983.”

14. “[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (*Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818 [73 L.Ed.2d 396, 410]).

15. In my complaint, I assert violations of civil rights and other rights of which so-called “legal professionals” “would have known.” I also asserted evidence to demonstrate that such violations of guaranteed rights are planned, intentional, and organized for profit to the chosen few who are attorneys at law and officials benefitting at Plaintiffs’ expense. I also assert that discovery in the related cases to *Anderson* would further verify the civil and criminal allegations made or to be made by me and the other Plaintiffs, that are already confirmed as plausible.

16. Title 42 U.S.C. § 1988 in relevant part confers on the District Courts “protection of all person in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause” (emphasis added).

17. This Court has not been requested or asked to review State of New York court

decisions. The acts of State employees would be described to demonstrate such actions resulted in the conspiracy against my rights. Title 42 U.S.C. §1985 (2) applies to obstructing justice; intimidating a party, or witness if "two or more persons in any State ... conspire for the purpose of impeding, hindering obstructing, of defeating, in any manner, the due course of justice in any State."

18. This Court has not been requested or asked to review the decisions of the departmental disciplinary committees.

19. In *Zahrey v. City of New York*, (No. 98 Civ. 4546(LAP), 1999), on a motion to dismiss, the District Court dismissed the claims against defendant Coffey on the ground of qualified immunity. Without determining whether a prosecutor's fabrication of evidence violated a constitutional right, this Court ruled that Coffey was entitled to qualified immunity because "the law was not 'clearly established' in 1996 that a prosecutor's fabrication of evidence violated a persons's constitutional rights."

20. On appeal to the U.S. 2nd Circuit Court of Appeals for the Second Circuit, (*Zahrey v. Coffey*, No. 99-9119), this Court's dismissal was reversed and remanded: "We hold that there is a constitutional right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigatory capacity, at least where the officer foresees that he himself will use the evidence with a resulting deprivation of liberty. ... [W]e conclude that the allegations of the complaint suffice to indicate that a qualified immunity defense may not be sustained without further development of the facts."

21. My filed complaint was not served to the named defendants, I was prohibited from perfecting and filing any Amended Complaint and no Motion to Dismiss was filed before this Court's Opinion and Order to dismiss. This Court's presumption of motions to dismiss

(without the actuality) applies to many of the other Plaintiffs as well. Certainly, there was no opportunity to verify through discovery the falsification of evidence by State employees or attorneys at law who are defendants.

ROOKER-FLEDMAN DOCTRINE IS INAPPLICABLE

22. There are not State proceedings dealing with the issues raised in Plaintiffs' complaints, or with these Defendants; the relief sought (injunctive relief against the state and money damages against individuals) has not been sought in State courts. This District Court has not been asked to change any State decisions. Plaintiffs' complaints do not concern actions properly "judicial in nature" since Plaintiffs assert that revelations in *Anderson* confirm accusations of improper acts by individuals beyond the legal limits of their official positions, thereby harming Plaintiffs by deprivation of substantive and material guaranteed rights under U.S. laws.

23. The Supreme Court case of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* (544 U.S. 280 (2005)) clearly shows that claim preclusion is a separate doctrine entirely. In *Exxon* the requisite elements that must be met for the *Rooker-Feldman* doctrine to apply are defined as:

a. First: The case must be brought in District Court by a party that has already lost in state court.

b. Second: The injury claimed must be as a result of the judgment itself. There is no "judgment" in my case. The complaint in District Court concerns on-going abuse of civil rights under color of state law, or state authority, by state employees and other attorneys at law causing damages to Plaintiffs.

c. Third: A final judgment on the state court proceeding must have already been

rendered before the federal action is brought. This does not apply here.

d. Fourth: The federal case must invite review and rejection of the state law claim; if the claims are not identical, the Federal claim must be inextricably intertwined with the state law claim, so as to implicate common facts pertaining to the same transaction or occurrence. (*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16 (1983)). This does not apply to my case. Since official corruption causing deprivation of civil rights was not part of any State proceeding, since there was no previous injury from judgment since there was no final State court judgment, therefore *Rooker-Feldman* does not apply.

24. It is an abuse of discretion to dismiss a declaratory judgment action in favor of a state court proceeding that does not exist (*Michigan Tech Fund v. Century Nat'l Bank of Broward*, 680 F.2d 736, 742 (11th Cir. 1982)) (reversing discretionary dismissal of declaratory judgment complaint where there was "no pending state proceeding in which the issues in this case will necessarily be resolved"); (*Federal Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235 (11th Cir. 2000)).

25. In *ARW Exploration Corp. V. Aguirre* (947 F.2d 450 (10th Cir. 1991)), it was held that a district court abused its discretion when it dismissed a declaratory judgment action after a related state court proceeding had been dismissed. In that case the state court had not addressed the issues raised in the federal declaratory judgment action and those claims could no longer be adjudicated in state court because the state court proceeding had been dismissed.

STANDING

26. In my filed complaint, I assert that *Anderson* revealed and verified suspicions of systemic corruption by State employees acting in violation of their oaths of office. I believe that such abuses of official positions should be immediately stopped by injunctive relief appointing a

Federal Monitor. I respectfully believe this court overlooked this issue, and the urgent need and opportunity for the court's intervention.

27. Three tests determine if a would-be plaintiff has standing: the litigant must show: (a) that he has suffered personally some actual or threatened injury; (b) that the injury must be fairly traceable to the alleged illegal conduct of the defendant, and © that the injury must likely be redressed by a favorable decision. (*Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982)). Causation and redress ability are required (*Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41-43 (1976)). The Supreme Court has referred to the "injuring fact" standard as the "irreducible minimum" required by the Constitution.

FEDERAL RULES OF CIVIL PROCEDURE 8,9 & 12

28. My complaint presented substantive facts without "bald assertions." Such facts, must be taken as true (Opinion and Order, p.30). The revelations of egregious organized systemic corruption revealed in *Anderson* further substantiates the statements that might have been otherwise labeled implausible. Continued discovery would further substantiate the preliminary facts asserted. Plaintiffs made statements of fact and attempted to provide enough details (pursuant to Rules 8, 9 and 12) to demonstrate that in the light of *Anderson* the claims were not speculative and should not be summarily dismissed *Sua Sponte* without further discovery.

INFORMATION NOT ALLOWED

29. I believe I have a constitutional right to file an amended complaint, and to be, most importantly, substantively heard on the facts of my amended complaint. At the time this Court *Sua Sponte* dismissed my complaint, I was in the process of perfecting my amended

complaint. That amended complaint clarified the very troubling issues of corruption involving attorneys at law along with other members of the bar et al., having direct knowledge of the altering of official Court records in furtherance of a continuing fraud all of which was contained in my 2005 complaint to the First Department Departmental Disciplinary Committee.

30. During my tenure as a legal Executrix of my late husband's Estate, based on personal experience, I have come to realize that, in my opinion, the malignant cancer of corruption has metastasized with the New York State Judicial System.

31. If it were not for the uncurbed corruption I would not have been repeatedly defrauded and my husband's and my life's hard work would not have been squandered and maliciously destroyed. These actions have been bold, brazen and malicious. The very people who are sworn to serving and protecting society should be abiding by the law and enforcing these very laws. Instead, these same people routinely abuse the law and peoples rights cavalierly and with impunity. These actions are harmful to a lawful society.

32. It is my understanding that all attorneys, including members of the Judiciary, are officers of the court and further it is my understanding that they all have a sworn duty to report inappropriate or unlawful acts to the responsible oversight authority. I have seen and am a victim of the altering and falsification of official court records.

33. Due to the total absence of any meaningful oversight and self policing governance my rights have been repeatedly violated. The continuing egregious oppressive actions and obstruction of justice has served to deprive me financially through obstruction and engaging in a policy of attrition. This has damaged me not only financially, but also physically and emotionally as well as the loss of spiritual creativity as a concert pianist and the denial of the opportunity to perform in a Government sponsored tour representing the U.S. for the heads of the

European countries. My ethics complaints of improprieties have effectively and summarily been ignored. The total absence of any ethics oversight and accountability has permitted my situation to fester of over nineteen (19) years. To correct a factual error in the Opinion and Order, my filed complaint does not say and at not time did I hire Winthrop Rutherford, Jr. Or David G. Keyko to represent me in connection with my husbands Estate.

a. - The Testator, Edmund J. McCormick, died in November 1988. His Will nominated five (5) Executors, one of which was *Bankers Trust Company*, a chartered New York State Banking entity and Professional Corporate Fiduciary.

b. - The attorney and the law firm, purportedly representing the decedent's Estate, applied for the permanent "Letters Testamentary" and in late January 1989 they were issued by the Westchester County Surrogate, Judge Evans Brewster, naming five (5) Executors/Fiduciaries. (See Exhibit B - 1 pp.) An "Exemplified" copy of the permanent "Letter Testamentary" was issued by the same Surrogate Judge on April 10, 1989. (See Exhibit C- 2 pp.)

c. - In early 1996, I went to a friend of my husband (Ralph Martinelli, publisher of local Westchester newspapers), who spoke to the then Westchester Surrogate Judge Albert J. Emanuelli. Judge Emanuelli agreed to examine the Estate file and at the time found two (2) thing seriously wrong. The first thing, he related - a conflict involving the purported Estate attorney and *Bankers Trust Company* that left the Estate devoid of legal counsel after a Motion was filed in February 1989 on behalf of *Bankers Trust Company* by it's legal counsel. He refused to reveal the second thing that was wrong. The publisher told Judge Emanuelli in several contentious telephone conversations either he would disclose to him the second thing that Judge Emanuelli had discovered wrong or he would openly oppose him for reelection in his newspapers. The Judge told the publisher that he would give him legal ads, an overture that the publisher then refused. In 2000, Judge Emanuelli ran for reelection and the publisher, for the above reasons, supported Surrogate Judge Anthony A. Scarpino, Jr. Judge Emanuelli lost the election.

d - In early 2004, when looking at my copy of the original of the permanent "Letters Testamentary" that had been issued to me as a Legal Executrix, for the first time I discovered that the name of the Professional Corporate Fiduciary was not the same as nominated in the Will (*Bankers Trust Company*) - but instead *Bankers Trust Company of New York*. Upon further investigation, it turned out that the named entity, *Bankers Trust Company of New York* (that appears on the permanent "Letter Testamentary") did not exist in 1989 when the permanent "Letters Testamentary" were issued! NYS Banking Department records revealed that the entity, *Bankers Trust Company of New York*, named on the permanent "Letters Testamentary" (in

January 1989), did not become a legal Banking entity until more than ten (10) years later in September 1999. (See Exhibit D - 1 pp. - page 38 from the NYS Banking website) *Bankers Trust Company* has never been known as *Bankers Trust Company of New York* at anytime. (See Exhibit E - 1 pp. - page 37 from the NYS Banking website)

e. - Unaware of the material fact involving the permanent "Letters Testamentary," I obtained a Certificate of Fiduciary for the Estate in November 2001 from the Westchester County Surrogate's Court. This Certificate of Fiduciary for the Estate certified that *Bankers Trust Company* appears on the permanent "Letters Testamentary," when in fact, as previously stated, the nonexistent entity, *Bankers Trust Company of New York*, is actually listed on the permanent "Letters Testamentary" dated January 1989. It is now obvious that the Court Records were changed. (See Exhibit F - 1 pp.)

f. - In February, 2003, after more than two (2) years I succeeded in forcing Surrogate Judge Anthony A. Scarpino, Jr. To recuse himself since Judge Scarpino had been employed at *Bankers Trust Company*, who I was under the impression was the legal Corporate Executor/Fiduciary. The Estate was ultimately transferred to Dutchess County Surrogate Judge James Pagones.

g. - In early 2004, after discovering what name (*Bankers Trust Company of New York*) was actually on the permanent "Letters Testamentary," dated January 1989, I had a representative go to the Westchester Surrogate's Court to obtain a new Certificate of Fiduciary for the Estate. After paying for a new Certificate of Fiduciary, John Kelly Court Clerk and Jody Keltz Court Attorney/Referee (both attorneys at law) refused to provide the Certificate of Fiduciary for the Estate. It was provided only after they were told that it was needed for the IRS. The copy (signed by Judge Anthony A. Scarpino, Jr.,) and bearing a hand written notation on the bottom signed by John Kelly refers to the original "Letters Testamentary" and states that the name of *Bankers Trust Company* appears on them. (See Exhibit G - 1 pp.)

h - *Bankers Trust Company* on March 11, 1999 plead to three (3) felony counts in the S.D.N.Y. On June 4, 1999 *Bankers Trust Company* was purchased by Deutsche Bank and became a sentenced federal felon on July 26, 1999 (99cr250 - *USA v. Bankers Trust Company*). Furthermore, NYS statute bars a felon from acting as a fiduciary. It is my understanding from the NY Times that Deutsche Bank is currently under criminal investigation in the S.D.N.Y. This alteration of official Court Records in commission the this continuing constructive fraud, cover-up, obstruction of justice and violation of the public trust.

CONCLUSION

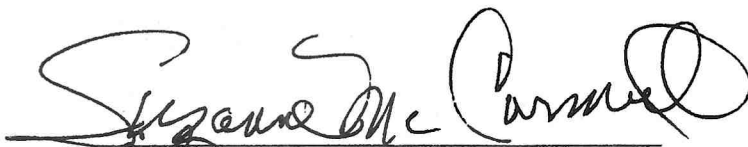
34. In Jefferson Fourteenth Assocs. F. Wometco de Puerto Rico, Inc., 695 F.2d 524 (11th Cir.1983), the court specifically prohibited such a *Sua Sponte* dismissal in the following

circumstances: (1) the defendant had not filed an answer and, thus, the plaintiff still had a right under Fed. R. Civ. P. 15(a) to amend the complaint; (2) the plaintiff's claim was brought in good faith and was not vexatious or patently frivolous; and (3) the district court had provided the plaintiff with neither notice of its intent to dismiss the complaint nor an opportunity to respond. (*Neitzke v. Williams*, 490 U.S. 319, 330 n. 8) (1989) (declining to decide whether a district court possesses the ability to *Sua Sponte* dismiss a complaint under Rule 12(b)(6)). All of the foregoing factors are present here.

35. In Gloria Perex, et. al v. Jesus Ortiz, et. al, 849 F. 2d 793 (2nd Cir. 1988), the court, "held that the district court erred in dismissing the claims sua sponte without giving plaintiffs notice and an opportunity to be heard, and abused its discretion in dismissing he official capacity suits against appellees with giving appellants an opportunity to amend their complaints to conform to the requirements for such a suit."

36. Accordingly, based on the facts and decisions cited above, plaintiff respectfully requests that this Court return my complaint to active status.

DATED: August 25, 2008

A handwritten signature in black ink, appearing to read 'Suzanne McCormick', written over a horizontal line.

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